IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1371 of 2007

B.Murthy @ Adikesavamurthy .. Petitioner

Vs

1. The Commissioner of Police,
   Coimbatore City, Coimbatore.

2. The Secretary to Govt.,
   Govt. of Tamil Nadu,
   Prohibition and Excise Dept.,
   Fort St. George, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.L.Mahendran

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Made by P.D.DINAKARAN,J.)

The petitioner, who was detained at Central Prison, Coimbatore, by an order dated 8.1.2007 of the first respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Immoral Traffic Offender, seeks a writ of Habeas Corpus to call for the

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records in connection with the order of detention passed in proceedings C.No.01/G/IS/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. The ground case, based on which the detention order was passed, was registered on the basis of the complaint given by one Srinivasan. According to the complainant, on 14.12.2006 at 10.00 hours, while he was standing at the bus stop, the detenu, acting as a pimp, called the complainant and solicited him for prostitution. When the complainant tried to move away from the place, the detenu, at the knife point, demanded money and forcibly took away Rs.500/- from his shirt pocket. The detenu also threatened him with his life if he informed this to anybody. Based on the oral complaint given by the complainant before the Inspector of Police, holding in-charge of B-14 Kuniamuthur Police Station, the detenu and two other girls were arrested and their confessional statements, admitting the offence, were recorded. The Inspector of Police came to the police station with the accused and seized properties and a case in B-13 Podanur P.S. Cr.No.1845/2006 under Sections 4(2)(c), 8(b) of ITP Act and Section 386 IPC., was registered and later, the detenu was sent for judicial remand.

3.The second respondent, taking note of the above ground case and finding that the detenu came to the adverse notice of the authorities in two similar cases, viz. in Crime No.1237/04 on the file of B-6 Peelamedu Police Station and in Crime No.763/05 on the file of B-3 Kattur police station and having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public peace and public order, ordered his detention dubbing him as a "Immoral Traffice Offender".

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in considering the representation dated 28.7.2007 made on behalf of the detenu. Hence, we do not propose to go into other aspects of the case.

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5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2.Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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5.3.The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4.Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5.It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.1. Coming to the case on hand, admittedly, objecting to the order of detention dated 8.1.2007, a representation dated 15.2.2007 was made on behalf of the detenu, which was received by the Government on 16.2.2007. Remarks were called for from the detaining authority on 19.2.2007, who, in turn, called for parawar remarks from the sponsoring authority and on receipt of the same on 1.3.2007, the

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file was circulated on 2.3.2007. The Under Secretary and the Joint Secretary considered the same on 5.3.2007 and the Minister concerned considered the file on 6.3.2007 and rejected the same. Though the rejection letter was prepared on 7.3.2007, it was sent to the detenu only on 15.3.2007, after a delay of eight days and served on him on 20.3.2007. Even if we exclude the intervening holidays, viz. 10.3.2007 and 11.3.2007 (being Saturday and Sunday), there is delay of six days in sending the same, which remained unexplained and hence, inexcusable.

7.At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8.That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. As already stated, the delay of six days in sending the rejection letter to the detenu stands unexplained and thus, rendered the detention illegal. Hence, the said point must succeed. Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at

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liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1. The Secretary to Government
   of Tamil Nadu, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

2. The Commissioner of Police,
   Coimbatore City, Coimbatore.

3. The Superintendent
   Central Prison, Coimbatore.
   (In duplicate for communicate to Detenu)
4. The Joint Secretary to Government,
   Public (Law and Order) Department,
   Fort St. George, Chennai-9.
5. The Public Prosecutor,
   High Court, Madras.

1 cc to Mr.L.Mahendran, Advocate, SR.72022

ntk (co)

dv/26.12.

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